

OPTION TO PURCHASE
Blocks 1, 2, 4 and 7 of the Park East
Milwaukee, Wisconsin

For and in consideration of the sum of **Fifty Thousand Dollars (\$50,000.00)** ("Option Fee") tendered herewith, Milwaukee County ("County") does hereby grant unto **Head of the Herd LLC** ("Developer") an exclusive Option to Purchase ("Option") the property known as **Blocks 1, 2, 4, and 7 of the Park East in Milwaukee, WI** ("Property") and more particularly described in **Exhibit A** attached hereto, on the following terms and conditions:

1. **Purpose.** This Option is granted to Developer for the sole purpose of acquiring and developing the Property in phases substantially in accordance with the master plans attached as **Exhibit B** (the "Master Plans"), and, with respect to each Phase (as hereafter defined) in accordance with final plans approved by the County pursuant to paragraph 16(a). The County shall not be responsible for any site development costs, including, but not limited to, extension of water and sewer laterals to the Property line and the provision or replacement of sidewalks and curb cuts, unless agreed to otherwise through a separate agreement.
2. **Purchase Price.** The purchase price shall be one dollar (**\$1.00**) ("Purchase Price").
3. **Phases.** Development of the Property will occur in phases, with each phase defined as follows and set forth on the Master Plans:
 - a. "Phase I" – development of Block 1
 - b. "Phase II" – development of Block 2
 - c. "Phase III" – development of Block 4
 - d. "Phase IV" – development of Block 7
(each a "Phase," collectively "Phases").
4. **Term.** With respect to Phase I and Phase II, the Option shall be in effect for a period of three (3) years ("First Option Period"), commencing with the date the County executes this Option. With respect to Phase III, the Option shall be in effect for three years beginning on the first day after expiration of the First Option Period (the "Second Option Period"). With respect to Phase IV, the Option shall be in effect for a period of three (3) years beginning on the first day after the expiration of the Second Option Period ("Third Option Period").
5. **Lease for Construction Staging.** During the First Option Period, Developer shall have the exclusive right to lease Block 4 and Block 7 from County for purposes of construction staging at no cost. Developer and its agents and contractors shall provide to County insurance endorsements in compliance with the minimum coverages and indemnification requirements set forth in Exhibit C.
6. **Lease for Temporary Surface Parking.** During the First Option Period or the Second Option Period, Developer may improve, at its expense, and use Block 4 and Block 7 as temporary surface parking lots in accordance with City of Milwaukee rules and regulations under a lease with the County, which shall include at least the following terms:
 - a. Developer applies for and receives all necessary permits or licenses from the City of Milwaukee. County will cooperate with Developer in supporting such permits.
 - b. Developer submits improvement and landscaping plans to County pursuant to section 16(a) for approval prior to beginning work, and agrees to pay for and maintain all improvements it makes on the Blocks.
 - c. Developer pays County a fee of \$5,000/Block/month during the term of the lease; provided, however, that Developer shall be entitled to a credit against such rent obligation for all sums expended or to be expended to improve the Blocks pursuant to subparagraph b, above.

- d. During the term of the Lease, the County will not take any action that results in the loss of the property tax exemption for the Property that is subject to the lease nor require a payment in lieu of taxes; however, if the Property subject to the lease does lose its property tax exemption, Developer shall be responsible for any property taxes during the term of the Lease if applicable.
 - e. Developer acknowledges that the City of Milwaukee will impose time limits upon the use of the Blocks for temporary surface parking.
7. **Manner of Exercise.** Developer shall exercise each Phase of this Option by delivering a written statement to the Economic Development Director on or before the end of the applicable Option Period, as defined herein. Developer may not exercise a future Phase of this Option if it is in default, as reasonably determined by the County, of a Development Agreement from a previous Phase, including without limitation a default of the Community Benefits Reporting required under section 9(b)(ii)(4) below.
8. **Closing.** Closing of each Phase shall be held at the office of the Title Company or such other place mutually acceptable to the parties on the earlier of: (i) the date which is thirty (30) days after the date Developer exercises the Option; or (ii) at such other time as the parties may mutually agree ("Closing" or "Closing Date"). If the date determined for Closing as provided above falls on a day other than a business day, the Closing Date shall be postponed to the next following day which is a business day. As used herein, the term "business day" shall mean any day other than Saturday, Sunday or a holiday for the State of Wisconsin or national banks. The parties shall cooperate and use reasonable efforts to effect an escrow style closing or in such other fashion as may be reasonably acceptable to the parties and settlement agent that will not require personal attendance at Closing.
9. **Closing Deliveries.**
- a. **County's Closing Documents.** On the Closing Date for each Phase, County will execute and/or deliver to the Title Company or cause to be executed and/or delivered the following documents in form and content acceptable to Developer (collectively, "County Closing Documents"):
 - (i) **Deed.** A General Warranty Deed conveying the Phase to Developer subject to only the Permitted Exceptions ("Deed").
 - (ii) **Title Documents.** Such other documents in form and substance reasonably acceptable to County and as may be reasonably required by Title Company in order to issue the Title Policy required by this Option, including, without limitation, any seller's affidavit and "gap" undertaking.
 - (iii) **Closing Statement.** A closing statement in form and substance acceptable to both County and Developer, and consistent with the terms, provisions and conditions of this Option ("Closing Statement").
 - (iv) **Transfer Tax Declarations.** Such transfer tax and similar declarations, affidavits or certificate as may be required by applicable law, completed in a manner reasonably acceptable to Developer.
 - (v) **Miscellaneous.** Such other documents, instruments and affidavits in form and substance reasonably acceptable to County as will be reasonably necessary to consummate the transaction contemplated by this Option, including, without limitation, affidavits identifying any registered brokers involved as the only persons entitled to a brokerage or similar commission in connection with consummation of the transaction contemplated herein.
 - b. **Developer's Closing Documents.** On the Closing Date for each Phase, Developer will execute and/or deliver or cause to be executed and/or delivered to the Title Company the following (collectively, "Developer's Closing Documents"):
 - (i) **Purchase Price.** The Purchase Price.
 - (ii) **Development Agreement.** Three (3) executed versions of a Development Agreement ("Development Agreement"), the final version of which shall be negotiated by the Economic Development Director and Developer for each Phase, but all of which shall incorporate the following provisions:

- (1) "Certified Construction Costs" means Construction Costs that have already been, or will be, verified or approved by a mutually agreeable third party or drawn from a title escrow or other similarly monitored account. "Construction Costs" includes construction hard costs and soft costs, but excludes developer fees, profits, carrying costs, interest incurred by Developer, dividends or other return on investment, or any costs for which Developer has been reimbursed by another governmental agency or paid for with tax incremental district funds.
- (2) If Developer does not commence construction of the Phase, defined as commencement of excavation, within ninety (90) days following Closing or substantially complete construction of the Phase within twenty-four (24) months following commencement of construction (or by such other commencement or completion dates as may be set forth in the Development Agreement or as may be mutually agreed to by the parties), County shall have the right to compel Developer to reconvey that portion of the Property to County on ten (10) days written notice of the default, in exchange for the sum of Developer's Certified Construction Costs expended, if any. All construction must be according to the approved Final Plans.
- (3) Developer shall submit final construction plans, including detailed landscape plans for the Phase ("Final Plans") and evidence of firm financing without contingencies. Final Plans must be consistent with the Master Plans, including aesthetic design, quality of building materials and use, except as otherwise agreed by the parties. Any Material Alteration must be approved by the Economic Development Director. All of the foregoing must be satisfactory to the Economic Development Director in form and substance prior to Closing. For purposes of the Development Agreement and the Final Plans, "Material Alteration" includes:
 - (a) A 20% variation in square footage of the proposed Phase.
 - (b) A 10% change in square footage of space available to the public for a proposed Phase.
 - (c) A material change in the quality of exterior construction materials.
 - (d) A change in the mix of uses of the proposed Phase.Material Alteration does not include:
 - (e) An alteration required by any municipality or other governmental agency or otherwise required by law.
 - (f) An alteration required due to shortages or unavailability of materials (though substitute must be of comparable quality).
- (4) Execute a PERC Compliance Plan ("PERC Compliance Plan") with the Department of Administrative Services – Economic Development Division and the Community Business Development Partners (CBDP) department of Milwaukee County prior to Closing. The PERC Compliance Plan includes goals and minimum good faith efforts for combined Disadvantaged Business Enterprise (DBE) Small Business Enterprise (SBE), Minority Business Enterprise (MBE) and Women-owned Business Enterprise (WOBE) participation (collectively "SBE/DBE"), residential hiring, workforce development (apprenticeship/job training) and the payment of prevailing wage for construction. Developer's goal for SBE/DBE participation is at least 17% of A/E professional services Project costs and 25% of construction Project costs. Developer shall meet with CBDP prior to closing and shall consult the CBDP website for County certified DBE contractors. Developer's goal for residential hiring is 25 percent of the hours worked on the Project being performed by Milwaukee County residents. Developer's goal for workforce development is 15% of the hours worked utilizing job training or apprenticeship programs, or other workforce development plan approved by and in coordination with the Milwaukee Area Workforce Investment Board (MAWIB). Collectively these goals are referred to as "Community Benefits" and the reporting is referred to as "Community Benefits Reporting."

- (5) The construction of the Project shall be subject to the following labor standards: (a) all labor shall be contracted and paid on an hourly basis; use of a per piece or other hourly equivalent basis is not permitted, (b) overtime at prevailing overtime rates for work on Saturday, Sunday and legal holidays and for more than 40 hours per week or 8 hours in any calendar day, (c) minimum hourly base wage rates and minimum hourly fringe benefits as specified in the most recently published Wisconsin Department of Workforce Development's Final Determination of annual prevailing wages in Milwaukee County and (d) compliance with the Prevailing Wages and Employment Data section of the Park East Redevelopment Compact. These labor standards shall be included in each contract and subcontract in connection with development of the Project. As part of its PERC Compliance Plan, the Developer shall maintain records of compliance and require each contractor and subcontractor to maintain and submit to the County certified payrolls for verification purposes. Failure to pay prevailing wages could result in the Developer forfeiting all or a portion of its Deposit to the County as liquidated damages, restitution to workers not paid the appropriate wage, and being disqualified from participating in future County projects for a period up to three (3) years. The Developer shall cause its contractors and subcontractors and any assignee to comply with this section with respect to construction of the Project.
- (6) The Developer shall commit to ensuring that SBE/DBE have an equal opportunity to receive and participate in the Project and shall require that its contractors and subcontractors do the same, as required by the Disadvantaged Business Enterprise section of the PERC and Chapter 42 of the Milwaukee County Code of General Ordinances. The Developer shall utilize good faith efforts to achieve its goal of a minimum of 25 percent DBE participation for Project costs relating to construction and a minimum of 17 percent DBE participation for Project costs relating to professional services. The Developer's PERC Compliance Plan, which will require the approval of the County's Economic Development Division and the Office of Community Business Development Partners, will restate these goals, outline the minimum good faith efforts necessary to achieve the goals and specify the reporting requirements of the Developer. Participation will be monitored through B2GNow, an online reporting system, or other software designated by the County prior to the execution of the Development Agreement for the relevant Phase. Failure to use good faith efforts to abide by the DBE portion of its PERC Compliance Plan could result in the Developer forfeiting all or a portion of its Deposit to the County as liquidated damages and being disqualified from participating in future County projects for a period up to three (3) years. The Developer shall cause its contractors and subcontractors and any assignee to comply with this section with respect to construction of the Project.
- (7) The Developer shall commit to utilizing good faith efforts to achieve its goal of 25 percent of total construction labor hours being allocated to Milwaukee County residents. The Developer's PERC Compliance Plan will restate this goal, outline the minimum good faith efforts necessary to achieve the goal and specify the reporting requirements of the Developer. Participation will be monitored through certified monthly payroll reports from all contractors and subcontractors, submitted by Developer through LCPTracker, an online reporting system, or other software designated by the County prior to the execution of the Development Agreement for the relevant Phase. Achievement of this goal is consistent with the terms of the Local Employment and Coordination section of the PERC. Failure to use good faith efforts to reach this goal could result in the Developer forfeiting all or a portion of its Deposit to the County as liquidated damages and being disqualified from participating in future County projects for a period up to three (3) years. The

- Developer shall cause its contractors and subcontractors and any assignee to comply with this section with respect to construction of the Project.
- (8) Unless the Developer otherwise agrees to a job training plan with the Milwaukee Area Workforce Development Board, the Developer shall commit to utilizing good faith efforts to achieve its goal of having 15 percent of total construction labor hours participate in job training or apprenticeship programs. The Developer's PERC Compliance Plan will restate this goal, outline the minimum good faith efforts necessary to achieve the goal and specify the reporting requirements of the Developer. Participation will be monitored through certified monthly payroll reports from all contractors and subcontractors, submitted by Developer through LCPTracker, an online reporting system, or other software designated by the County prior to the execution of the Development Agreement for the relevant Phase. Achievement of this goal is consistent with the terms of the Enhanced Apprenticeship and Training section of the PERC. Failure to use good faith efforts to reach this goal could result in the Developer forfeiting all or a portion of its Deposit to the County as liquidated damages and being disqualified from participating in future County projects for a period up to three (3) years. The Developer shall cause its contractors and subcontractors and any assignee to comply with this section with respect to construction of the Project.
 - (9) The Developer shall allow the County, the Milwaukee County Department of Audit, or any other party the County may name, when and as they demand, to audit, examine, access and make copies of, excerpts or transcripts from any records, books, files, premises or other information related to any Phase. The Developer shall maintain and make available to the County the above-described information for no less than three years after conclusion of the obligations and responsibilities of the Developer described herein and required by this Agreement. These requirements shall apply to any and all contractors and subcontractors to the Developer under this Agreement.
 - (10) Submit at Closing of each Phase a Performance Deposit in the amount of Fifty Thousand and No/100ths Dollars (\$50,000.00) ("Deposit"). The Option Fee shall be converted into and applied by the County as the first Deposit. The Deposit shall not be applied against the purchase price, but shall be held by the County to guarantee completion of the Phase. The Deposit shall be returned to the Developer without interest upon successful completion of the Phase in accordance with terms of the Development Agreement and the conditions expressed herein, as certified by the Economic Development Director on behalf of County. All or part of the Deposit may be retained if Developer fails to complete the Phase as agreed in the Agreement.
 - (11) Identify the entity and members of the entity that will be the developer and owner of the Project. (It is the intention of Developer to establish separate development entities for each Project, with the expectation that local developers will participate in the overall development of the Property.)
 - (12) After execution, a memorandum of the Development Agreement ("Memorandum of Agreement") will be recorded with the Register of Deeds and the Property title encumbered until successful completion of each Phase and submittal of required Community Benefits Reporting, and compliance with DBE, Residential Hiring and Workforce Development requirements as certified by the Economic Development Director on behalf of County at which time the parties shall execute and record a termination of the Development Agreement.
- (iii) **Closing Statement.** The Closing Statement.
 - (iv) **Miscellaneous.** Such other documents, instruments and affidavits in form and substance reasonably acceptable to County as will be reasonably necessary to consummate the transactions contemplated by this Option.

- c. **Escrow Closing.** This transaction will be closed through an escrow with the escrow department of the Title Company, in accordance with the terms and conditions of this Option. Payment of the Purchase Price and delivery of the Closing Documents will be made through the escrow.
- d. **Possession.** Possession of the Property subject to the Phase shall be delivered to Developer on the Closing Date.

10. Additional Closing Terms.

- a. **Option Fee Non-Refundable.** If Developer fails to exercise this Option, the Option Fee shall be non-refundable. Otherwise, as provided above, the Option Fee shall be converted to the Deposit for Phase I and shall be subject to paragraph 9b(ii)(5), above.
- b. **Restrictions on Assignment.** This Option, or any Phase thereof, may not be assigned by Developer without the written consent of the Economic Development Director. Notwithstanding anything to the contrary contained in this Option, Developer reserves the right, at its sole discretion at any time during the First, Second and Third Option Period, to join and associate with other individuals or entities in joint ventures, partnerships or otherwise for the purpose of developing the Property, subject, however, to Developer promptly notifying County in writing of the identity of any such additional parties, those additional parties being in compliance with Section 12 herein and Developer remaining responsible for fulfillment of the obligations set forth in this Option and the Development Agreement for all Phases, including without limitation Community Benefits Reporting. Any assignment of the Option, or any Phase thereof, by Developer in violation of the term of this Option shall result in termination of the Option by County and, if prior to exercise of this Option, retention of the Option Fee as liquidated damages.
- c. **Adjustments and Prorations.** At Closing, County and Developer will make the following adjustments and apportionments of expenses with respect to the Phase:
 - (i) **Prorations.** General real estate taxes for the current tax year, if any, will be pro-rated at Closing. Special assessments of record, if any, shall be paid by the Developer.
 - (ii) **Title Insurance.** County shall pay for the cost of a standard form of owner's title insurance policy ("Title Policy"). Developer will pay for the cost of extended coverage and any endorsements to the Title Policy which Developer obtains from the Title Company (as hereinafter defined) and for the costs of any lender's title insurance policy.
 - (iii) **Transfer and Recording Taxes.** County is exempt from paying real estate transfer taxes, per s. 77.25(2), Wis. Stats., but shall pay the costs of recording the Deed (as hereinafter defined) and ½ of any escrow closing costs charged by the Title Company for escrows requested by the County. Developer shall pay ½ of the escrow closing costs charged by the Title Company.
 - (iv) **Other Costs.** All other closing costs will be allocated in accordance with the customs prevailing in similar transactions in the greater metropolitan area in which the Phase is located.
- d. **Title and Survey.**
 - (i) During the applicable Option Period, Developer shall obtain: (1) a title commitment on the Phase ("Title Report") from a title company chosen by Developer ("Title Company") together with such endorsements thereto as Developer may reasonably require; and (2) an ALTA/ACSM survey of the Phase ("Survey"). Developer shall review the Title Report and Survey and satisfy itself as to all title and survey matters affecting the Phase during the applicable Option Period.
 - (ii) At Closing, County shall convey to Developer, by general warranty deed, fee simple title to the Phase, subject, however, to the Permitted Exceptions (as defined herein). The "Permitted Exceptions" shall consist of: (1) the lien of current general real estate taxes, which are not yet due and payable as of the Closing; (2) zoning and all other applicable laws and governmental regulations which affect the Property; (3) any matters shown on the Survey; (4) acts done or suffered by, through or under, or judgments against, Developer; (5) any recorded easements, restrictions or other documents or matters (including matters which relate to the Survey)

- shown on the final form of pro forma title policy issued by the Title Company at Closing; and (6) the Development Agreement.
- (iii) Notwithstanding the foregoing, no mortgages, other loan security instruments, construction liens, judgment liens or other financial encumbrances encumbering all or part of the Phase ("Financing Liens") shall be deemed to be Permitted Exceptions. At or before the Closing, County shall cause the Phase to be released from all Financing Liens created by County and shall cause any such Financing Liens not created by Developer but which encumber the Phase to be bonded and insured over to the reasonable satisfaction of Developer and the Title Company.
 - (iv) At Closing, County shall (1) execute Title Company's customary form of owner's title affidavit(s) and indemnities as needed to delete any pre-printed exceptions from the Title Policy, but in any event acceptable to County in its reasonable discretion, and (2) execute such other instruments as are customarily and reasonably required by the Title Company for compliance with tax reporting or disclosure requirements and which are acceptable to County in its reasonable discretion.

11. Property Condition.

- a. County shall convey each Phase of the Property in its "AS IS" condition with all faults and defects, known or unknown, physical or otherwise, including but not limited to environmental defects, whether disclosed or not disclosed, known or not known, and without representation or warranty, express or implied. Such provisions shall bar all tort, warranty, and misrepresentation claims, including any action based on non-disclosure, excepted as provided herein.
- b. County discloses that the Property may contain old building foundations, building materials and other debris. Without changing the "AS-IS" nature of this transaction, Developer is aware that the Property is or may be affected by adverse geotechnical conditions due to the presence of these materials or due to the bearing capacity of the soil. County has conducted no geotechnical investigation of the Property and assumes no liability for any subsurface conditions. Developer is encouraged to undertake a geotechnical investigation and other due diligence reviews that it deems necessary upon execution of this Option by both parties.
- c. County shall not provide a survey of the Property related to any Phase.
- d. Developer may hire a contractor to conduct a geotechnical investigation and/or site survey of the Property prior to Closing upon written approval of the County. To obtain County permission, Developer will require said contractor to submit to the County scopes of work for the proposed activity, timing for the work and evidence of insurance according to the limits in **Exhibit C**, and the indemnity set forth in **Exhibit C** shall apply to such pre-Closing work. Upon submittal of the required information, County shall provide a written right-of-entry to Developer, its contractor and agents.
- e. At any time that Developer is leasing any portion of the Property (for construction staging, interim parking or for any other purpose), Developer shall be responsible for maintenance of the leased Property, including but not limited to, snow removal for sidewalks, litter removal, mowing services and any utility bills incurred as a result of use of such Property, as applicable.

12. Economic Development Department Buyer Policy. County shall not sell the Property to Developer if as an individual or as a member of a company, shareholder of a corporation or partner in a partnership, any of the following conditions apply:

- a. Delinquent real estate or personal property taxes are due to any municipality in Milwaukee County.
- b. Building or health code violations are not being actively abated.
- c. Convicted of violating an order of the Department of Neighborhood Services or Health Department of any municipality within Milwaukee County within 12 months preceding Closing.
- d. Convicted of a felony crime that affects property or neighborhood stability or safety.
- e. Outstanding judgment to Milwaukee County or any municipality within Milwaukee County.

((a)-(e) inclusive, "Economic Development Department Buyer Policy")

If Developer or any assignee of Developer is found to violate any condition of the Economic Development Department Buyer Policy, the County shall give Developer notice to correct this condition prior to expiration of the applicable Option Period or other such period as determined by the Economic Development Director. If the violation is not corrected within the specified period, this Option may be canceled at the option of the County and the Option Fee shall be retained by the County as liquidated damages.

13. Environmental Matters.

- a. County shall not provide a Phase I Environmental Site Assessment ("Phase I").
- b. If Developer desires to obtain its own Phase I, the cost for such investigation shall be at Developer's sole expense.
- c. If an authorized Phase I recommends soil and groundwater testing, analyses and reports ("Phase II"), the Phase II cost shall be at Developer's sole expense. Developer may only conduct a Phase II after receiving the express written consent of County, which consent shall not be unreasonably withheld.
- d. If the Phase II reveals environmental impacts subject to regulation by federal, state or local law or regulations and Developer exercises any Phase of this Option and acquires the portion of the Property subject to such environmental impacts, Developer agrees, if required by law, to remediate the Property with respect to that Phase, obtain regulatory closure and be solely responsible for all remediation expenses.
- e. Developer may elect to purchase a Phase in its current environmental condition without obtaining the Phase II investigation. Developer shall be required to sign at Closing a "Purchaser's Acknowledgment, Waiver and Indemnification Respecting Environmental Conditions Affecting the Property."
- f. If Developer exercises any Phase of this Option, it shall release County from, and shall indemnify, hold harmless, and defend County from and against any and all liabilities, claims, penalties, forfeitures, and suits, and all reasonable costs and expenses, including the costs of defense, settlement, and reasonable attorney's fees and/or any other damages related to, or arising out of, soil, subsoil, groundwater, environmental or any other conditions arising out of, or in any way connected with the presence of any Hazardous Substances on, in, or under that portion of the Property, including but not limited to, liability arising out of or in any way connected with the investigation, monitoring or cleanup under any federal, state or local law or regulation or ordinance of any Hazardous Substances on, in or under that portion of the Property, and including but not limited to the transportation, storage and disposal of such Hazardous Substances; provided, however, that such release and indemnity shall not apply to any such damages or expenses arising from a spill, dumping or storage of Hazardous Substances by County during the period it held title to the Property. Hazardous Substances shall include all substances identified as hazardous by Federal, State, County or Municipal Law, Statute, Ordinance, Order or Regulation related to the protection of the environment (including, without limitation, any regulations promulgated by the Federal Environmental Protection Agency or the Wisconsin Department of Natural Resources).
- g. If Developer exercises any Phase of this Option, it shall be solely responsible for any required repair, cleanup, remediation or detoxification arising out of any Hazardous Substances brought onto or introduced into that portion of the Property or surrounding areas by the Developer, its employees, contractors, agents or guests, and Hazardous Substances whose presence pre-exists the inception of Developer's possession, located in and on the Property, regardless of whether they are discovered or disturbed as a result of Developer's construction activities on, at or near that portion of the Property. Developer shall indemnify, defend and hold County harmless from any liability, cost, damage, claim or injury (including reasonable attorney fees) related to, or arising out of, such Developer's obligations, or failure to perform such obligations described above, and any claim, action or damages asserted against the County by any party or governmental agency related to, or arising out of any Hazardous Substances at, in, under, or migrating to or from that portion of the Property; provided, however, that such release and indemnity shall not apply to any such damages or expenses arising from a spill, dumping or storage of Hazardous Substances by County during the period it held title to the Property.

- h. If the cost for the Phase II or any required remediation renders a Phase or the Property in its entirety economically infeasible, this Option with respect to such Phase or the Property in its entirety may be canceled at the option of either party.

14. ADA Compliance. Developer agrees to comply with all requirements of the Americans with Disabilities Act, U.S.C. #12101, et. seq.

15. Time is of the Essence. It is understood that time is of the essence as to the provisions of this Option.

16. Miscellaneous.

- a. **Consent.** The parties agree that whenever the consent or approval of a party is required hereunder, that such consent or approval shall not be unreasonably withheld, delayed or encumbered. With respect to consents or approvals by or from Developer, Sarah Watterson shall be the authorized person to grant such consents or approvals on behalf of Developer. With respect to consents or approvals by or from County, James Tarantino, or his successor, as Economic Development Director, shall be the authorized person to grant such consents or approvals on behalf of County.
- b. **Default.**
 - (i) **County Default.** If County shall (1) fail to consummate the purchase and sale contemplated herein when required to do so pursuant to the provisions hereof, time being of the essence, and Developer is ready, willing and able to perform, or (2) otherwise breach or default under any of the provisions of this Option and County does not cure such failure, breach or default within thirty (30) days after receipt of written notice from Developer specifying the breach or default, then Developer shall be entitled to exercise any and all remedies available to it at law or in equity, including, without limitation, specific performance of the terms, provisions and conditions of this Option.
 - (ii) **Developer Default.** If, prior to Closing, Developer shall (1) fail to consummate the purchase and sale contemplated herein when required to do so pursuant to the provisions hereof, time being of the essence, and County is ready, willing and able to perform, or (2) otherwise breach or default under any of the provisions of this Option and Developer does not cure sure failure, breach or default within thirty (30) days after receipt of written notice from County specifying the breach or default, then County shall have the right, as its sole remedy for default by Developer, to terminate this Option and retain the Option Fee as liquidated damages, and Developer and County shall thereafter be relieved of any further obligations under this Option, at law or in equity. Rights and remedies post-Closing shall be as specified in the executed Agreement.
- c. **Broker's Commission.** Developer represents and warrants to County that it is not represented by any real estate brokers with respect to this Option.
- d. **Notice.** Any and all notices, demands, requests, submissions, approvals, consents or other communications or documents required to be given, delivered or served or which may be given, delivered or served under or by the terms and conditions of this Option or otherwise, shall be in writing and delivered to the parties at their respective addresses below by: (1) personal/hand delivery, which shall be deemed to have been delivered on the date received by the recipient; (2) registered or certified U.S. Mail with return-receipt requested, which shall be deemed to have been delivered on the earlier of (i) the date of delivery to recipient set forth on the return-receipt or (ii) the date that is three (3) business days after being deposited with the U.S. Mail by sender; (3) overnight delivery service (such as Federal Express or other reputable service) with confirmation receipt requested, which shall be deemed to have been delivered on the earlier of (i) the date of delivery set forth on the confirmation receipt of (ii) one (1) business day after being deposited with such service by sender; (4) electronic mail with a hard copy sent by any of the foregoing manners, which shall be deemed to have been delivered on the date sent; provided that, in all cases, postage or delivery charges shall be prepaid.

If to County:

Milwaukee County Economic Development
633 W. Wisconsin Avenue, Suite 903

Milwaukee, WI 53203
Attention: James Tarantino
james.tarantino@milwaukeecountywi.gov

If to Developer: Head of the Herd LLC
1345 Avenue of the Americas, 46th Floor
New York, NY 10105
Attention: Sarah Watterson
swatterson@fortress.com

Any party may change its address for the service of notice by giving written notice of such change to the other party, in the manner above specified.

- e. **Captions.** The section headings or captions appearing in this Option are for convenience only, are not a part of this Option, and are not to be considered in interpreting this Option.
- f. **Entire Agreement; Modification.** This Option, including its exhibits, constitutes the entire agreement between the parties with respect to the subject matter herein contained, and all prior negotiations, discussions, writings and agreements between the parties or other extrinsic documents relating to the subject matter herein contained are superseded and of no further force and effect. No covenant, term or condition of this Option will be deemed to have been waived by either party, unless such waiver is in writing signed by the party charged with such waiver. This agreement may not be modified without the signatures of both parties and consistent with Wisconsin Statutes Section 59.17(2)(b)(3).
- g. **Binding Effect.** This Option will be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.
- h. **Controlling Law.** This Option will be governed by and construed in accordance with the laws of the State of Wisconsin, without application of the choice of law rules of such State.
- i. **Severability.** The unenforceability or invalidity of any provisions hereof will not render any other provision herein contained unenforceable or invalid.
- j. **Counterparts.** This Option may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. Either party may rely upon an electronic copy (PDF) of an executed counterpart of this Option and this Option shall be enforceable against the party executing such counterpart.

17. Special Conditions

- a. **Taxable Use.** Conveyance may be subject to a deed restriction requiring that each Phase shall be taxable for property-tax purposes. The restriction shall require that no owner or occupant of the Phase shall apply for, or seek, or accept, property-tax exemption (whether under Wis. Stat. §70.11 or otherwise) for the Phase, or any part thereof. This restriction shall be a permanent covenant that runs with the land, and may only be released if certified in writing by the County Executive and either the County Comptroller or the ICC-appointed resident of the municipality in which the Property is located, pursuant to Wis. Stats. § 59.17(2)(b)3. Notwithstanding the foregoing, the parties acknowledge that a publicly-owned parking structure will likely be included in Phase II in support of the arena facility and that such parking structure may be tax exempt.

The Option is executed in two (2) counterparts, each of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, The Developer, Head of the Herd LLC, has signed and sealed this Option this 4th day of September, 2015.

Developer

Peter Feigin

Peter Feigin
President

Date: September 4, 2015

STATE OF WISCONSIN)
) ss.
COUNTY OF MILWAUKEE)

Personally came before me this 4th day of SEPTEMBER, 2015, Peter Feigin, President of Head of the Herd LLC to me known to be the person who executed the above and foregoing Option.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

(SEAL)

Notary Public

MILWAUKEE County,
My Commission is permanent

[Signature]

IN WITNESS WHEREOF, Milwaukee County, has caused this Option to be duly executed in its name and on its behalf by Chris S. Abele, County Executive.

Milwaukee County



Chris S. Abele
County Executive

Date: 9/4/15

STATE OF WISCONSIN)
) ss.
COUNTY OF MILWAUKEE)

On this 4th day of September, 2015, before me, the undersigned officer, personally appeared Chris S. Abele who acknowledged themselves to be the County Executive of Milwaukee County, a Corporation, and that they, as such officers of said Corporation being authorized so to do, executed the foregoing Option for the purposes therein contained for and on behalf of said Corporation and as such officers caused the corporate seal to be hereunto duly affixed.

(SEAL)
Notary Public
Milwaukee County, WI
My Commission Expires 01/29/2017


RACHEL A. FIELD

Approved for Execution by Corporation Counsel

By: 
Deputy Corporation Counsel

Certified pursuant to Wis. Stats. § 59.17(2)(b)3 on the 4th day of September, 2015.
Certification is attached as **Exhibit D**.

Exhibit A
Legal Description

All that certain parcel or parcels of land located in the City of Milwaukee, County of Milwaukee, State of Wisconsin, more particularly described as follows:

PHASE I:

PARK EAST ON THE WEST SIDE OF THE RIVER SUBD IN SOUTH ½ OF SECTION 20,
RANGE 7 NORTH, TOWNSHIP 22 EAST BLOCK 1 LOT 1; BID #21, TID #48

Address: 1247 N. 6th Street
Tax Key Number: 3620461000

PARK EAST ON THE WEST SIDE OF THE RIVER SUBD IN SOUTH ½ OF SECTION 20,
RANGE 7 NORTH, TOWNSHIP 22 EAST BLOCK 1 LOT 2 EXCEPT THAT PART TAKEN FOR
STREET; BID #21, TID #48

Address: 740 W. Winnebago Street
Tax Key Number: 36204621000

PARK EAST ON THE WEST SIDE OF THE RIVER SUBD IN SOUTH ½ OF SECTION 20,
RANGE 7 NORTH, TOWNSHIP 22 EAST BLOCK 1 LOT 3 EXCEPT THAT PART TAKEN FOR
STREET; BID #21, TID #48

Address: 1227 N. 6th Street
Tax Key Number: 36204631000

PHASE II:

PARK EAST ON THE WEST SIDE OF THE RIVER SUBD IN SOUTH ½ OF SECTION 20,
RANGE 7 NORTH, TOWNSHIP 22 EAST BLOCK 2 LOT 1; BID #21, TID #48

Address: 519 W. McKinley Avenue
Tax Key Number: 3620464000

PARK EAST ON THE WEST SIDE OF THE RIVER SUBD IN SOUTH ½ OF SECTION 20,
RANGE 7 NORTH, TOWNSHIP 22 EAST BLOCK 2 LOT 2; BID #21, TID #48

Address: 516 W. Juneau Avenue
Tax Key Number: 3620465000

PHASE III:

PARK EAST ON THE WEST SIDE OF THE RIVER SUBD IN SOUTH ½ OF SECTION 20,
RANGE 7 NORTH, TOWNSHIP 22 EAST BLOCK 3 LOT 1; BID #21, TID #48

Address: 423 W. McKinley Avenue
Tax Key Number: 3620466000

PARK EAST ON THE WEST SIDE OF THE RIVER SUBD IN SOUTH ½ OF SECTION 20,
RANGE 7 NORTH, TOWNSHIP 22 EAST BLOCK 3 LOT 2; BID #21, TID #48

Address: 420 W. Juneau Avenue
Tax Key Number: 3620467000

PHASE IV:

PARK EAST ON THE WEST SIDE OF THE RIVER SUBD IN SOUTH ½ OF SECTION 20,
RANGE 7 NORTH, TOWNSHIP 22 EAST BLOCK 4 LOT 1; BID #21, TID #48

Address: 1244 N. 4th Street
Tax Key Number: 3620468000

PARK EAST ON THE WEST SIDE OF THE RIVER SUBD IN SOUTH ½ OF SECTION 20,
RANGE 7 NORTH, TOWNSHIP 22 EAST BLOCK 4 LOT 2; BID #21, TID #48

Address: 1245 N. Old World Third Street
Tax Key Number: 3620469000

PARK EAST ON THE WEST SIDE OF THE RIVER SUBD IN SOUTH ½ OF SECTION 20,
RANGE 7 NORTH, TOWNSHIP 22 EAST BLOCK 4 LOT 3; BID #21, TID #48

Address: 1225 N. Old World Third Street
Tax Key Number: 3620470000

PARK EAST ON THE WEST SIDE OF THE RIVER SUBD IN SOUTH ½ OF SECTION 20,
RANGE 7 NORTH, TOWNSHIP 22 EAST BLOCK 4 LOT 4; BID #21, TID #48

Address: 1224 N. 4th Street
Tax Key Number: 3620471000

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REMARKS:

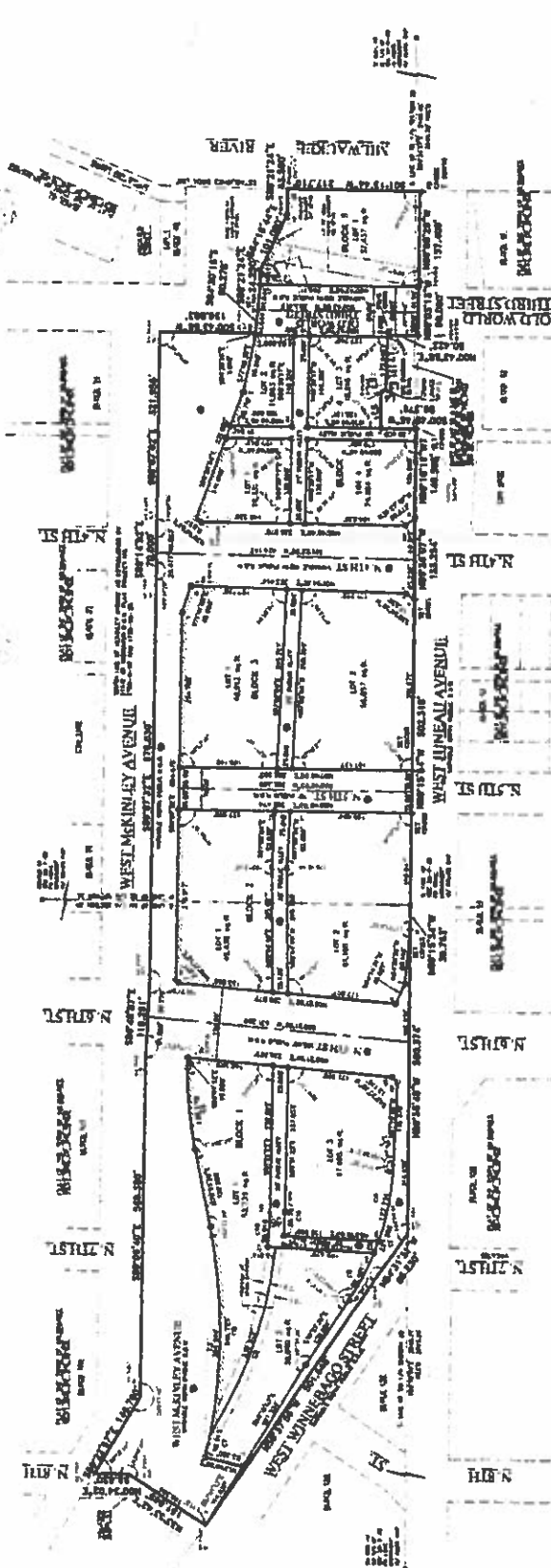
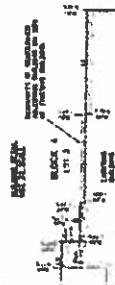
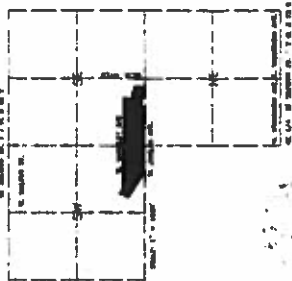
DRUG

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FOR THE NATIONAL BUREAU OF INVESTIGATION

THE UNIVERSITY OF CHICAGO

THE UNIVERSITY OF CHICAGO PRESS



**National
Survey &
Engineering**
243-781-1000
Ext. 241-797-1373
16745 W. Ellsworth Blvd
Suite 240
Westminster, CO 80040-1518

21. 87003 & 88114 (20-1)
at 41001 m. 2 up 1000 m
Long 1000 m

ORDER BY THE COURT

Exhibit B
Master Plans



Exhibit C
Insurance Requirements - Right of Entry

Insurance certificates must be sent for inspection and approval prior to commencement of the proposed activity to Teig Whaley-Smith, Economic Development Director, Milwaukee County by email to teig.whaley-smith@milwaukeecountywi.gov

TYPE OF INSURANCE

LIMITS

Workers' Compensation

Statutory limits

Employers Liability

Bodily Injury by Accident

Each Accident \$100,000

Bodily Injury by Disease

Each Employee \$100,000

Policy Limit \$500,000

Public Liability

A Comprehensive General or Commercial General

Insuring Agreement that provides:

Occurrence Coverage

Premises/Operations Protection

Products Completed Operations Protection - for

Three years after completion of the proposed activity

Independent Contractors (owners, contractors

protective coverage)

Contractual Liability for Risks Assumed to this

agreement

NOTE: If claims made coverage is provided, the policy must be amended so all protected occurrences are covered regardless of when the claim is made.

Bodily Injury/Property Damage

Each occurrence \$1,000,000

General occurrence \$1,000,000

Products/completed

operation aggregate \$2,000,000

Automobile

Business Auto Policy that provides:

Liability coverage for all owned, non-owned and hired vehicles

Sudden and Accidental Pollution Coverage

Provide MCS-90 Endorsement when applicable

in accordance with the Motor Carrier Act of

1980

Bodily Injury/Property Damage

Combined Single Limit \$1,000,000

MILWAUKEE COUNTY MUST BE NAMED AS ADDITIONAL INSURED PARTY ON THE POLICY.

Exhibit C

Indemnification

To the fullest extent permitted by law, contractor agrees to defend, indemnify, and hold harmless Milwaukee County, its officers, agents and employees from and against all claims, demands, damages, liability, suits, judgments and decrees, attorney's fees, losses, costs and expenses of any kind or nature whatsoever which may come against the County on account of injury or death of any person or persons or damage to any property occurring directly or indirectly from the performance or lack of performance of work hereunder, or negligence or carelessness, by contractor or its employees, agents or servants, in the performance of such work, including, without limitation, claims related to Hazardous Substances or environmental liability. The term "Hazardous Substances" shall have the meaning given in Section 13(f) of the Option to Purchase. The indemnifications contained herein shall survive the completion of the work.

Exhibit D
Certification pursuant to Wis. Stats. § 59.17(2)(b)3.

CERTIFICATION APPROVING
OPTION TO PURCHASE
Blocks 1, 2, 4 and 7 of the Park East
Milwaukee, Wisconsin
MILWAUKEE COUNTY, WISCONSIN

The undersigned certify that each has reviewed the terms and conditions of the Option to Purchase Blocks 1, 2, 4 and 7 of the Park East and hereby certifies, pursuant to Wis. Stats. § 59.17(2)(b)3 that the sale is in the best interests of Milwaukee County; and

The Economic Development Division of Milwaukee County is hereby authorized to commence all actions necessary to complete the sale of Blocks 1, 2, 4 and 7 of the Park East to Head of the Herd LLC as soon as practicable, in accordance with the Option to Purchase attached hereto.

Dated this 9/4 day of 2015.

Pursuant to Wis. Stats. § 59.17(2)(b)3 this certificate is valid if signed by two of the following.

Signatures for approval:


Chris Abele, Milwaukee County Executive
And/or assigns

STATE OF WISCONSIN)
) ss.
COUNTY OF Milwaukee)

Personally came before me this 4th day of Sept., 2015,
Chris Abele, to me known to be the persons who executed the above and
foregoing Option.

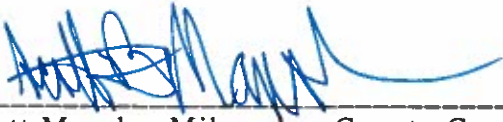
IN WITNESS WHEREOF, I have hereunto set my hand and official seal.


Notary Public RACHEL A. FIELD
Milwaukee County,

My Commission 01/29/2017

[SEAL]





Scott Manske, Milwaukee County Comptroller
And/or assigns

STATE OF WISCONSIN)
) ss.
COUNTY OF Milwaukee)

Personally came before me this 4th day of September, 2015,
Scott Manske, to me known to be the persons who executed the above and
foregoing Option.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

[SEAL]


Michael G. Tress
Notary Public
Milwaukee County,

My Commission Expires 01/29/2017